



## I. Introduction

Fed. R. Civ. P. 39(a)(2) provides for the Court to strike a jury demand where it finds that with respect to some or all of the issues in the action, a right of trial by jury does not exist under the Constitution or statutes of the United States. The Trust moves to strike Plaintiff's jury demand because all of Plaintiff's causes of action are (and can only be) brought under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, and it is well established that no jury trial is available for ERISA claims.

## II. Argument

### A. Jury Trial Is Not Available Under ERISA.

The Trust is a self-funded health and welfare benefit plan governed by ERISA, and is administered by Defendant Board of Trustees. Dkt. No. 1, ¶¶ 1, 2, 4, 5. All of Plaintiff's causes of action in this case arise under ERISA § 502(a), 29 U.S.C. § 1132(a). *Id.*, ¶ 1.

It is well-established in the Ninth Circuit and nationwide that there is no right to a jury trial under ERISA. *e.g.*, *Ingram v. Martin Marietta Long Term Disability Income Plan for Salaried Employees of Transferred GE Operations*, 244 F.3d 1109, 1114 (9<sup>th</sup> Cir. 2001) (citing; *Thomas v. Oregon Fruit Prods. Co.*, 228 F.3d 991, 996-97 (9<sup>th</sup> Cir. 2000))

Because all of Plaintiff's claims are under ERISA § 502, 29 U.S.C. § 1132,<sup>1</sup> Plaintiff is not entitled to a jury trial with respect to any of the claims in this action.

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<sup>1</sup> Plaintiff has not asserted any state law claims in this action, and cannot claim that a right to jury trial should attach on the basis of any such claims. Any state law claims would, of course, be completely preempted by ERISA in this case. Any state or common law claim that comes within the scope of ERISA's civil enforcement provisions "duplicates, supplements, or supplants the ERISA civil enforcement remedy" and "conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Aetna Health Inc. v. Davila*, 542 U.S. at 200, 209 (2004).

### III. Conclusion

For the foregoing reasons, Defendants respectfully request that Plaintiff's jury demand be stricken, and that the Court docket this matter as a non-jury case.

DATED this 21st day of November, 2011, at Seattle, Washington.

By: s/ Michael P. Monaco

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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